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NO. 02-9065

IN THE SUPREME COURT OF THE UNITED STATES

SHAKUR MUHAMMAD, aka John E. Mease,

Petitioner,

v.

MARK CLOSE,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit

BRIEF OF PRISON REFORM ADVOCACY CENTER AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS

The Prison Reform Advocacy Center (PRAC) is a public interest law firm dedicated to improving prison conditions and reducing reliance on incarceration. Established in 1997, PRAC litigates to enforce constitutional standards regarding medical care, safety and other conditions of confinement; advises inmates on how to exhaust their administrative remedies; provides to the Sixth Circuit Court of Appeals, a summary of prison grievance systems in the states within the Sixth Circuit; educates the public about the collateral consequences of incarceration; and coordinates classes in empowerment, expression and legal rights for women prisoners at a local lock-up in Cincinnati, Ohio. Through its work, PRAC has emerged as a regional and national expert on various criminal justice issues, prison issues and prisoners' rights.[1]

[1] No counsel for any party authored any part of this brief. No persons or entities other than *amicus curiae* made any monetary contribution to the preparation or submission of this brief. Letters from the parties consenting to the filing of this brief have been submitted to the Clerk of the Court.

SUMMARY OF THE ARGUMENT

Petitioner, Shakur Muhammad, a Michigan prisoner, alleges that he was falsely charged with a major misconduct violation, which was filed against him in retaliation for his previous lawsuits and grievances against Respondent. After his release from administrative segregation, Petitioner filed a retaliation action pursuant to 42 U.S.C. §1983, seeking monetary damages. The §1983 action did not challenge the underlying criminal charge or sentence, and did not implicate any entitlement to good time credits.

The questions presented are (1) whether a plaintiff, like Petitioner, who brings a §1983 suit challenging only the conditions of his confinement, rather than the fact or duration of his confinement, must satisfy the favorable termination requirement of *Heck v. Humphrey*, 512 U.S. 477 (1994); and (2) whether a prisoner, like Petitioner, who has been, but is no longer in, administrative segregation, may bring a §1983 suit challenging the conditions of his confinement without first satisfying *Heck*'s favorable termination requirement.

The answer to the first question is no. That answer is supported by a review of the Prison Litigation Reform Act; by a study of the history of the habeas corpus; and by a review of the precedents of this Court.

Both the plain language and the legislative history of the Prison Litigation Reform Act ("PLRA") make clear that a prisoner must simply exhaust his administrative remedies before filing a §1983 action challenging the conditions of his confinement. The prisoner is not required to obtain a favorable termination prior to filing suit in federal court. Congress specifically excluded habeas cases challenging the "fact or duration of confinement in prison" from its definition of actions "with respect to prison conditions." So Congress answered the question before this Court. The debate on the PLRA occurred after this Court decided *Heck*. Congress imposed an exhaustion requirement for two reasons: to stem the flood of frivolous prisoner lawsuits and to give state

prison systems the first opportunity to resolve the inmate's problem. Because Congress is presumed to have been aware of *Heck* at the time it enacted the PLRA, and because Congress, in passing the PLRA, was motivated by a desire to make prisoner lawsuits much more difficult to file, Congress certainly would have included a favorable termination requirement in the PLRA had it wanted to do so. The absence of a favorable termination requirement makes it crystal clear that Congress felt that implementing the exhaustion requirement was sufficient to stem the rising tide of §1983 prisoner lawsuits.

The history of the "great writ" and its treatment by this Court confirms that habeas has never been extended to prison conditions cases. Historically, the writ of habeas corpus has been utilized to free prisoners who are illegally incarcerated. Central to a habeas case is the challenge to the fact or length of a term of imprisonment. The Antiterrorism and Effective Death Penalty Act ("AEDPA") was signed into law on April 24, 1996, two days before the PLRA became effective. The legislative history of the AEDPA reveals that Congress did not require prisoners who file §1983 lawsuits challenging the conditions of their confinement to also file habeas corpus petitions. Moreover, Congress did not extend habeas to challenges to conditions of administrative segregation that are filed after an inmate is no longer in administrative segregation.

The Sixth Circuit Court of Appeals has misapplied this Court's holdings in *Heck* and *Edwards v. Balisok*, 520 U.S. 641 (1997) by requiring prisoners who are placed in administrative segregation to favorably terminate their adverse disciplinary decisions, regardless of whether the prisoner's placement in administrative segregation affects the fact or duration of his confinement.

Thus, the answer to the second question is yes: no favorable termination requirement applies to an inmate who files a §1983 lawsuit after being released from administrative segregation. This Court has never extended *Heck* or *Edwards* that far. The Sixth Circuit is not even sure it is correct to

impose a favorable termination requirement on inmates who claim that discipline is imposed in retaliation for protected activity. *Huey v. Stine*, 230 F.3d 226 (6th Cir. 2000). In fact, the Sixth Circuit has invited this court to set it straight if it is wrong. *Id.* at 230. This Court must accept the Sixth Circuit's invitation by holding that §1983 may be used to challenge the conditions of confinement in administrative segregation, especially when the inmate is no longer incarcerated in administrative segregation, and that no favorable termination requirement need be imposed.

ARGUMENT

I. A SECTION 1983 PLAINTIFF WHO CHALLENGES THE CONDITIONS OF HIS CONFINEMENT IS NOT REQUIRED TO SATISFY *HECK V. HUMPHREY*'S FAVORABLE TERMINATION REQUIREMENT.

Prisoners need only exhaust administrative remedies, not favorably terminate available remedies. Congress told us so when it enacted the PLRA. The Sixth Circuit has ignored Congress, ignored the history of the "Great Writ, " and ignored the precedents set by this Court in holding that all prisoners who challenge discipline must meet a favorable termination requirement.

A. Congress Excluded Habeas Cases From the Definition of Cases Challenging Prison Conditions; An Inmate Need Only Exhaust, Not Favorably Terminate Administrative Proceedings.

On April 26, 1996, President Clinton signed into law the Prison Reform Litigation Act ("PLRA"), which the 104 Congress had enacted as Title VIII of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub.L. 104-134, 110 Stat. 1321 (1996). The PLRA provides that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title…by a prisoner confined in any jail, prison, or other correctional facility *until such administrative remedies as are available are exhausted.*" 42 U.S.C. §1997e(a) (emphasis added).[2]

[2] A point noted by this Court in *Porter v. Nussle*, 534 U.S. 516, 521 (2002).

Although "action...with respect to prison conditions" is not defined in §1997e, the term is defined, in another PLRA provision which concerns prospective relief, 18 U.S.C. § 3626(g)(2):

> the term "civil action with respect to prison conditions" is "any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials in the lives of persons confined in prison, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison."[3]

This statutory definition is significant for two reasons. First, the broad definition of conditions clearly encompasses retaliation cases; second, the definition affirmatively excludes "habeas corpus proceedings challenging the fact or duration of confinement in prison" from § 1983 prison conditions cases. Conspicuous by its absence is any reference by Congress to the favorable termination requirement of *Heck v. Humphrey*, 512 U.S. 477 (1994). Thus, Congress relied on the traditional, narrow definition of habeas and has necessarily answered in the negative the first certiorari question presented here: there is no favorable termination requirement for §1983 cases that challenge only conditions and not the fact or duration of confinement.

In *Porter,* this Court noted that the purpose of the PLRA was to reduce frivolous inmate filings and provide to state prison officials an opportunity to address problems before they come to court. This Court has not suggested that an inmate must win a state administrative grievance, only that he complete the process in order to clarify "the contours of the controversy":

> Beyond doubt, Congress enacted §1997e(a) to reduce the quantity and improve the quality of prisoner suits; to this purpose, Congress afforded corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case. In some instances, corrective action taken in response to an inmate's grievance might improve prison administration and satisfy the inmate, thereby obviating the need for litigation. In other instances, the internal review might "filter out some frivolous claims." And for cases ultimately brought to court, adjudication could be facilitated by an administrative record that clarifies the contours of the controversy.

Porter, 534 U.S. at 524-525 (internal citations omitted).

Had Congress wanted to make favorable termination rather than termination, i.e., exhaustion, the requirement, it could have easily done so. This Court decided *Heck* on June 24, 1994. The Congressional debates on the PLRA took place during the summer and fall months of 1995, and the PLRA was signed into law on April 26, 1996. Therefore, if Congress had intended to incorporate *Heck*'s favorable termination requirement into the PLRA and mandate that prisoners challenging the conditions of their confinement must first seek and obtain favorable termination of their claims, Congress would have done so. As this Court has held, "it is not only appropriate but also realistic to presume that Congress was thoroughly familiar with [our] precedents...and that it expect[s] its enactment[s] to be interpreted in conformity with them." *North Star Steel Co. v. Thomas*, 515 U.S. 29, 34 (1995)(*citing Cannon v. Univ. of Chicago*, 441 U.S.

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[3] In *Porter*, the Court debated, without deciding, whether it was appropriate to borrow the definition of "prison conditions" in 18 U.S.C.§3626(g)(2) for the purpose of determining when a prisoner had to exhaust administrative remedies. Regardless of the answer to that query, there should be no question that it is appropriate to look to §3626 in deciding whether Congress intended to blur the distinction between habeas and §1983 actions when it enacted the PLRA.

677, 699 (1979)).[4] The fact that Congress did not incorporate a favorable termination requirement into the PLRA, despite its presumed awareness of this Court's decision in *Heck*, makes it clear that Congress did not intend to impose the more burdensome favorable termination requirement on prisoners who seek to challenge their conditions of confinement.

Despite Congress's emphasis on discouraging frivolous litigation, Senator Hatch, a PLRA author, made it clear that a PLRA objective was to preserve the right of prisoners to file legitimate §1983 conditions lawsuits in federal courts:

> No one, of course, is suggesting that prison conditions that actually violate the Constitution should be allowed to persist....It is time to restore sanity to this system by imposing legitimate limits on the ability of inmates to tie the courts and prisons in knots through frivolous lawsuits. Procedures must be modified to quickly identify the viable prisoner claims and weed out the meritless chaff. The money saved by reducing litigation costs could more appropriately be used by the states to help ensure that adequate prison space is available, and the courts will have more time to devote to truly worthy prisoner claims.

Enhancing the Effectiveness of Incarceration: Hearing on Prison Reform Before the Senate Judiciary Committee, 104th

[4] This Court made a similar statutory interpretation argument in *Booth v. Churner*, 532 U.S. 731 (2001) when it held that exhaustion was required even when the remedy sought by the inmate was not offered in the administrative scheme. "It has to be significant that Congress removed the very term we had previously emphasized in reaching the result Booth now seeks, and the fair inference to be drawn is that Congress meant to preclude the *McCarthy* result." *Booth,*, 532 U.S. at 740. (In *McCarthy v. Madigan*, 503 U.S. 140, 155-156 (1992), this Court had held that inmates did not have to exhaust procedures that did not offer the relief sought by the inmate).

Cong. (1995)(statement of Senator Orrin Hatch, Member, Senate Judiciary Committee).

B. Historically The Writ Of Habeas Corpus Applies Only to Challenges to the Fact or Duration of Incarceration and Not to Prison Conditions Cases.

This case is about whether Shakir Muhammad was the victim of retaliation in prison, not whether he belongs in prison, or whether his conviction is proper, or whether his sentence is correct. Relief in this case will not affect those issues. A careful examination of the history of the writ of habeas corpus demonstrates that it has always been tied to challenging custody itself, not the conditions of that custody.

1. Introduction to the History of the Great Writ

The writ of habeas corpus has traditionally "constituted the major barrier between government and the wrongful detention of any person." Emanuel Margolis, *Habeas Corpus: The No-Longer Great Writ*, 98 DICK. L. REV. 557, 622 (1994). In *Preiser v. Rodriguez*, 411 U.S. 475, 494 (1973), this Court correctly held that "[i]f a state prisoner is seeking damages, he is attacking something other than the fact or length of his confinement, and he is seeking something other than immediate or more speedy release—the traditional purpose of habeas corpus. In the case of a damages claim, habeas corpus is not an appropriate or available remedy."

2. The Writ at Common Law

The common law and statutory evolution of the writ of habeas corpus is consistent with this Court's holding in *Preiser*. Blackstone hailed the Great Writ, habeas corpus *ad subjuciendum*, as "the most celebrated writ in the English

law." 3 BLACKSTONE, COMMENTARIES 129 (Am. ed. 1832). Its origins can be traced to the Magna Charta. Originally, the writ came in several different forms[5] and was used as an independent remedy for the first time at the beginning of the sixteenth century.[6]

In 1641, an act of Parliament authorized the courts of King's Bench or CommonPleas to issue the writ of habeas corpus *ad subjiciendum* to inquire about the cause of detention in both civil and criminal cases. Dallin H. Oaks, *Legal History in the High Court—Habeas Corpus*, 64 MICH. L.REV. 451, 460 (1966). The Habeas Corpus Act of 1679 "merely clarified which courts or judicial officers could issue the writ, empowered judicial officers to issue it when courts were not in session, and established rules to govern the practice incident to the writ and to prevent its evasion." *Id.*

Under the Habeas Corpus Act of 1679, "the use of the Great Writ against official restraints was simply to ensure that a person was not held without formal charges and that once charged he was either bailed or brought to trial within a

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[5] *Ad respondendum* (to remove a prisoner confined by process of an inferior court to charge him with an action in the court above); *ad satisfaciendum* (to remove a prisoner to charge him with execution in the court above); *ad faciendum et recipiendum*, sometimes called *cum causa* (to remove a cause and a prisoner from an inferior court to the courts in Westminster); *ad prosequendum, testificandum,* or *deliberandum* (to remove a prisoner in order to prosecute or testify in an action or to be tried in the proper jurisdiction). Blackstone, *supra.* at 129-31 (*cited in* Dallin H. Oaks, *Habeas Corpus in the States—1776-1865*, 32 U.CHI. L.REV. 243 n. 3 (1965).

[6] According to Oaks, the writ of habeas corpus was used as an independent remedy for the first time at the beginning of the sixteenth century, when the writ of habeas corpus *cum causa* became a tool that the courts of King's Bench and Common Pleas utilized to establish their supremacy over the courts of Chancery and the Exchequer, the Privy Council, and the courts of Admiralty, Requests, and High Commission. Dallin H. Oaks, *Legal History in the High Court—Habeas Corpus*, 64 MICH. L.REV. 451, 459 (1966).

specified time. If a prisoner was held by a valid warrant or pursuant to the execution or judgment of a proper court, he could not obtain release by habeas corpus." Oaks, *Habeas Corpus in the States—1776—1865* at 245.

3. The Writ in America

The American colonies imported the common-law writ.[7] The federal constitution included the writ and the provision was copied by the original thirteen states as well as the states that entered the Union after 1789.[8] Oaks, *Habeas Corpus in the States—1776—1865* at 249.

Congress included a habeas corpus provision that allowed only federal prisoners to seek habeas corpus in the

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[7] Originally, only three of the twelve states that had adopted written constitutions during the first decade following the Revolutionary War (North Carolina, Massachusetts and Georgia) mentioned the writ of habeas corpus. When the constitutional convention convened in Philadelphia in 1787, four states (North Carolina, Massachusetts, Georgia and New Hampshire) had included habeas corpus guarantees in their state constitutions; eight had no guarantees; and one state (Rhode Island) had no written constitution at all. Oaks, *Habeas Corpus in the States—1776-1865* at 247-248.

[8] By 1844, the five original colonies that had no constitutional provision, plus Rhode Island and Georgia, had adopted constitutional provisions modeled after Art. I, sec. 9, cl. 2. Massachusetts, North Carolina and Massachusetts kept their original provisions. Except for Vermont, the twenty-one new states admitted to the Union after 1787 and prior to 1860 adopted constitutional provisions that were identical to the federal guarantee. Virginia added its provision, which did not allow suspension under any circumstances, in 1830. Vermont adopted its provision, which was modeled on Virginia's, in 1836. Maryland adopted its provision in 1867 and South Carolina's became effective in 1868. Interestingly, the Constitution of the Confederate States of America also included the federal provision. Between 1867 and 1876, seven states—Alabama, Missouri, Texas, Louisiana, North Carolina, West Virginia and Maryland—adopted provisions specifically prohibiting the suspension of the writ of habeas corpus under any circumstances. Oaks, *Habeas Corpus in the States—1776-1865*, at 249-250, nn. 29-32, 34, 36.

Judiciary Act of 1789.[9] In addition to the limitation on who could seek the writ, this Court limited the statute's application to the uses derived from the black-letter common law. Therefore, consistent with the common law, if a court of competent jurisdiction committed substantive error, the prisoner's detention was not rendered illegal for habeas corpus purposes. Paul M. Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 HARV. L. REV. 441, 466 (1963).

Congress expanded the applicability of habeas corpus to state prisoners when it enacted the Habeas Corpus Act of 1867.[10] Although the new law applied to many more prisoners than had the Judiciary Act of 1789, "the basic and well-understood principle deeply imbedded in the law of the time [was] that a detention pursuant to the judgment of a competent tribunal is not illegal and does not, for purposes of collateral attack, "violate " the "law," even if error occurred." Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners* at 475. Despite the apparent statutory expansion, "there is no indication whatsoever that the bill intended to change the general *nature* of the classical habeas jurisdiction; that is, that it intended to expand the classes or categories of questions thought to be appropriately tested on collateral attack." *Id.* at 476-477 (emphasis in original).

This Court confirmed Congress's conservatism in *Ex parte Royall*, 117 U.S. 241 (1886), when it first articulated the exhaustion doctrine.[11] Although state courts began to enforce the exhaustion requirement with increasing rigidity after 1892, Congress did not codify the doctrine until it amended the Judicial Code in 1948.[12]

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[9] Section 14 of the Judiciary Act of 1789 provided:

> That all the before-mentioned courts of the United States, shall have power to issue writs of *scire facias, habeas corpus*, and all other writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law. And that either of the justices of the supreme court, as well as judges of the district courts, shall have the power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment.—Provided, That writs of *habeas corpus* shall in no case extend to prisoners in goal, unless where they are in custody, under or by colour of the authority of the United States, or as committed for trial before some court of the same, or are necessary to be brought into court to testify.

Judiciary Act of 1789, 1 Stat. 81 (1789).

[10] The Habeas Corpus Act of 1867, ch. 28, §1, 14 Stat. 385, (1867), stated that

> the several courts of the United States…within their respective jurisdictions, in addition to the authority already conferred by law, shall have power to grant writs of habeas corpus in all cases where any person may be restrained of his or her liberty in violation of the constitution, or of any treaty or law of the United States….

[11] In *Royall*, this Court held:

> We cannot suppose that Congress intended to compel…[the federal] courts…to draw to themselves, in the first instance, the control of all criminal prosecutions commenced in State courts….The injunction to hear the case summarily, and thereupon "to dispose of the party as law and justice require" does not deprive the court of discretion as to the time and mode in which it will exert the powers conferred upon it. That discretion should be exercised in the light of the relations existing, under our system of government, between the judicial tribunals of the Union, and of the States, and in recognition of the fact that the public good requires that those relations be not disturbed by unnecessary conflict between courts equally bound to guard and protect the rights secured by the Constitution.
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> 117 U.S. at 251.

[12] The codified exhaustion rule provided:

> (b) An Application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State correc-

In 1953, the writ of habeas corpus entered the modern era when this Court held that "it is the purpose of the federal habeas corpus jurisdiction to redetermine the merits of federal constitutional questions decided in state criminal proceedings." *Brown v. Allen*, 344 U.S. 443 (1953). In *Brown*, this Court held that the petitioner was entitled to a full reconsideration of his constitutional claims, including a redetermination of legal and factual issues, through a writ of federal habeas corpus, even though the state court had fully and fairly adjudicated his claims. *Brown*, 344 U.S. at 466-476. This expansive view of the role of federal habeas corpus to collaterally attack state court convictions continued to develop in such cases as *Fay v. Noia*, 372 U.S. 391 (1963) (holding that a prisoner who deliberately bypassed state appellate relief was not precluded from seeking federal habeas corpus relief) and *Kaufman v. United States*, 394 U.S. 217 (1969) (holding that search and seizure claims were cognizable under 28 U.S.C. § 2255). It was not until 1976, when this Court decided *Stone v. Powell*, 428 U.S. 465 (1976), that "the tide began to ebb and the "Great Writ" began to appear as something less than "great." Margolis, *Habeas Corpus: The No-Longer Great Writ, supra*, at 566.

4. 1996 Amendments to Habeas Statute

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. 104-132, 110 Stat. 1214 (1996), sharply curtailed prisoners' ability to collaterally attack their

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tive process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

(c) An Applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

62 Stat. 967 (1948), *amended by* 28 U.S.C. §2254(b)(1),(c).

unconstitutional convictions. The AEDPA was signed into law on April 24, 1996, two days before the PLRA became effective. Although the two statutes were enacted contemporaneously, and both attempted to curtail what Congress considered to be a dramatic rise in the number of frivolous lawsuits and habeas corpus petitions being filed by prisoners in the federal district courts, the enactment of the two laws was influenced by very different policy considerations.

Unlike the PLRA, the AEDPA was part of the Republican majority's "Contract with America." 141 CONG. REC. H1408 (daily ed. Feb. 8, 1995) (statement of Rep. Chabot) ("By moving forward on this bill, the Effective Death Penalty Act, we are fulfilling another element of the Contract with America." The enactment of the AEDPA was motivated in part by the tragic bombing of the Murrah federal building that occurred in Oklahoma City in April 1995. Because of this connection with the Oklahoma City bombing and the federal prosecution of its perpetrator, Timothy McVeigh, Congress felt that there was an urgent need to engage in habeas corpus reform out of respect to the families of McVeigh's victims as well as other victims of violent crime.

> There are several important parts of the bill that is before us, but the one key element that will help the victims of the Oklahoma City bomber and other victims of violent crime in [sic] habeas corpus reform....
>
> In Oklahoma City they had a press conference and came to the State capitol to urge Congress and the President to implement habeas corpus legislation that would significantly reduce the appeals process and expedite the imposition of death sentences. In strained, choking voices, they talked of the tragedy that tore at the city, leaving shattered families still only beginning to absorb the depths of their losses. Connie Williams wore a button with her dead son Scott's

> picture, bearing the words "Beloved Scott, Our Special Angel." His pregnant wife, Nicole, said, "I do not want his daughter to be in high school wondering why his killers are still on death row."
>
> She is right.

141 CONG. REC. S7820 (daily ed. June 5, 1995) (statement of Sen. Nickles).

Opponents of the AEDPA, however, viewed this sentiment as an ideal opportunity for proponents of the death penalty to reform habeas corpus procedures in order to accelerate the pace at which executions would occur.

> With this time-honored tradition of habeas corpus so much a part of the bedrock legal principles which underpin our society, why are we considering changing it at all? The answer is clear and has been readily acknowledged by the proponents of this so-called reform: they want to expedite the execution of those who have received the death penalty.

Id. at S7851 (dailey ed. June 5, 1995) (statement of Sen. Pell)

AEDPA proponents, on the other hand, believed that habeas corpus reform was needed in order to require federal courts to show more deference to state court findings and to provide some sense of finality to state court death penalty convictions.

> ...habeas corpus defeats the demand for finality. The current system of Federal habeas corpus defeats the important objective of having an end to litigation...the way our habeas system is used nullifies capital sentences. The constitutionality of the death penalty has been settled since 1976. Thirty-eight states now authorize capital punishment, but the inefficiency of current procedures has resulted in a de facto nullification of capital punishment laws. The public interest organizations that routinely involve themselves in capital cases have fully exploited the system's potential for obstruction. Delay is maximized by deferring collateral attack until the eve of execution. Once a stay of execution has been obtained, the possibility of carrying out the sentence is foreclosed for additional years as the case works its way through multiple layers of State and Federal courts.

Id. at S7822 (statement of Sen. Nickles).

Proponents of habeas corpus reform also believed that the original purpose of the writ of habeas corpus had been subverted and that reform was necessary to insure that the writ would be utilized for its originally intended limited purpose.

> In the early history of this country, habeas review was not available at common law to review by any other court a conviction of a felony entered by a court of competent jurisdiction. The function of the writ was to free people who had been imprisoned illegally...The constitutional great writ is preconviction.
>
> That is the Constitution writ. The writ of habeas corpus we are talking about today is postconviction, and it is a statutory writ that can be changed readily by the Congress of the United States.

Id. at S7836 (statement of Sen. Hatch).

The above excerpts reveal that Congress debated several policy considerations, such as federalism, the death penalty, the finality of criminal convictions, and victims' rights, that are unique to habeas corpus and that simply are

not implicated in conditions-only §1983 lawsuits. Although comity is a concern that affects both §1983 conditions and habeas corpus litigation, Congress dealt with the comity issue in two distinct ways in the AEDPA and the PLRA. In the PLRA, Congress enacted the exhaustion of administrative remedies requirement found in 42 U.S.C. §1997e(a). Congress's objective was to give prison officials the opportunity to remedy adverse prison conditions before permitting prisoners to litigate those issues in federal district court. In the AEDPA, Congress required prisoners to exhaust their state court remedies unless the state judicial process is inadequate or unless doing so would be futile.

Although the writ of habeas corpus has maintained its traditional role as a restraint against unlawful confinement, it has evolved into the primary means by which a prisoner may collaterally attack the constitutionality of the criminal conviction that resulted in his incarceration. The constitutionality of the confinement that is at issue in a writ of habeas corpus is that of the prisoner's underlying criminal conviction, *not* his placement in administrative segregation. As set out below this court has always required that some impact on the underlying sentence be demonstrated before acknowledging habeas as relevant. The Sixth Circuit's rule completely forsakes this history of limiting the writ of habeas corpus to challenges to the fact or duration of the criminal conviction or sentence.

C. The Sixth Circuit's Holding Ignores the Precedents of this Court Which Limit Habeas to Cases Where the Fact or Duration of Confinement on the Underlying Criminal Charges Are at Issue

The complete legal analysis in the unreported decision of the Sixth Circuit in this case is three sentences long:

> Thus, this case falls directly within the doctrine of *Heck v. Humphrey*, which this circuit applied to a prisoner seeking damages and expungement of a disciplinary infraction in *Huey v. Stine*. "In order to grant the plaintiff in this case the relief he seeks, we would have to unwind the judgment of the state agency." Thus, *Heck* bars the plaintiff's action under 42 U.S. C. §1983.

Muhammad v. Close, 47 Fed.Appx. 738, 739 (6th Cir. 2002) (internal citations omitted).

The Sixth Circuit's analysis below ignores this Court's precedent concerning the distinction between habeas corpus and §1983 suits challenging a prisoner's conditions of confinement. In *Preiser*, this Court reviewed the history of the writ of habeas corpus, emphasizing that the writ has "evolved as a remedy available to effect discharge from any confinement contrary to the Constitution or fundamental law, even though imposed pursuant to conviction by a court of competent jurisdiction." *Preiser*, 411 U.S. at 485. This Court then concluded that 'the respondent's suits...fell squarely within this traditional scope of habeas corpus..." because "the deprivation of their good-conduct-time credits was causing or would cause them to be in illegal confinement...." *Id.* at 487. However, this Court limited its holding in *Preiser* to the factual scenario at issue: a prisoner seeking to restore his good time credits because restoration of those credits would directly affect the duration of his confinement. *Id.* 411 U.S. at 494.

In *Heck*, this Court extended *Preiser*, to situations in which a prisoner's §1983 damages claim "would render a conviction or sentence invalid..." and held that a damages claim in that instance "is not cognizable under §1983." *Heck*, 512 U.S. at 487. This Court, however, also held that "if the district court determines that the plaintiff's action, even if successful will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed in the absence of some other bar to the suit." *Id.* Therefore, this Court expressly acknowledged that *Heck*'s favorable termination rule does not

apply to every prisoner's §1983 damages claim, but only to those claims that, if successful, would invalidate the prisoner's conviction or sentence.

In *Edwards v. Balisok*, this Court reaffirmed its previous decisions in *Preiser* and *Heck* by holding that a prisoner who brought a §1983 damages challenging the procedures used in his disciplinary hearing had to satisfy *Heck*'s favorable termination rule because, if his suit succeeded, his good time credits would be restored, thus directly affecting the duration of his confinement. *Edwards*, 520 U.S. at 646. However, this Court suggested that Balisok could still bring his §1983 action seeking injunctive relief against prison officials for failing to timely date-stamp witness statements because that action would not "necessarily imply" the invalidity of a previous loss of good-time credits...." *Id.* at 648.

In *Spencer v. Kemna*, 523 U.S. 1 (1998), this Court rejected as moot the petitioner's habeas corpus petition challenging his parole revocation on the grounds that the "reincarceration that he incurred as a result of that action is now over, and cannot be undone." *Id.* at 8. This Court refused to presume that petitioner had suffered "collateral consequences adequate to meet Article III's injury-in-fact requirement...." *Id.* at 14. More importantly, however, five members of this Court agreed that "a former prisoner, no longer "in custody," may bring a §1983 action establishing the unconstitutionality of a conviction or confinement without being bound to satisfy a favorable termination requirement that it would be impossible for him as a matter of law to satisfy." *Id.* at 21, 22, 25 n. 8.

This Court's jurisprudence emphasizes that a §1983 damages claim is the proper vehicle to bring a suit challenging the unconstitutional conditions of a prisoner's confinement, while a petition for a writ of habeas corpus is the means by which prisoners who are illegally incarcerated may gain their freedom immediately or in an expedited manner by successfully challenging the fact or duration of their confinement.

It is this jurisprudence that the Sixth Circuit conveniently ignores. In *Huey*, the Sixth Circuit held that since Huey's §1983 Eighth Amendment claim was "founded solely on an allegation that a corrections officer fals fied a misconduct report, then *Heck* applies." *Huey*, 230 F.3d at 231. The Court acknowledged that it "has, in unpublished opinions, applied the *Heck/Edwards* doctrine generally to prevent a prisoner found guilty in a prison disciplinary hearing from using §1983 to collaterally attack the hearing's validity." *Id.* at 228-229. The history of the writ, Congressional actions, and the actions of this court require some implication of the underlying sentence, not simply a challenge to a misconduct ticket. In *Huey*, therefore, the Sixth Circuit dropped the important tether to the underlying conviction when it improperly extended habeas rules to §1983 actions.

But the court did not stop there. Next, the Court analyzed Mr. Huey's contention that if the Court applied *Heck* to his claim, he would be denied a federal forum since he had already served his thirty day segregation sentence and thus had no way to seek and obtain favorable termination through a writ of habeas corpus before litigating his §1983 action. *Id.* at 229. The Court admitted that Huey's argument was "not entirely without force". *Id.* Despite its doubts concerning the "universality of the "favorable termination" requirement in light of this Court's decision in *Spencer*, the Court nevertheless chose to "continue to follow the Supreme Court's directly applicable precedent and "leave to the Court 'the prerogative of overruling its own decisions.'" *Id.* at 230.

The Sixth Circuit's flawed reasoning in *Huey* led to the erroneous decision below. In *Huey*, the Court assumed, without citing any authority, that *Heck* barred Huey's §1983 misconduct claim because it precluded the Court from "annul[ing] the judgment of the Michigan Department of Corrections." *Id.* at 231. This analysis is based on the Sixth Circuit's failure to remember the context in which this Court decided *Heck*; that is, a prisoner whose direct appeal of his criminal conviction was still pending in the Indiana state court system when he filed a §1983 action alleging that the

police and prosecutors had engaged in an unlawful investigation and destroyed potentially exculpatory evidence. *Heck*, 512 U.S. at 478-479.

The decision that would be "annulled" in Huey or "unwound" in the case at bar is an administrative disciplinary decision by prison staff members. Such administrative rulings are based only on "some evidence." *Superintendent v. Hill*, 472 U.S. 445, 454 (1985). Such rulings are rendered with a minimum of due process. *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974). Such rulings are not an appropriate basis for arguing issue preclusion and yet that is the status they achieve under the Sixth Circuit decisions. *Huey*, 230 F.3d at 231; *Muhammad*, 47 Fed.Appx. at 739. That is, the administrative decisions become unassailable without achieving a favorable termination in the administrative process itself. No precedent of this Court supports such a holding.

The Sixth Circuit's decision in *Huey* is also flawed because it is based on an unpublished decision, *Riley v. Kurtz*, 1999 WL 801560 (6th Cir. Sept. 28, 1999), which misinterpreted this Court's holdings in *Edwards* and *Spencer*. In *Riley*, the Sixth Circuit held that Riley was attempting to extend the rationale of *Spencer*'s concurring opinions "from situations where habeas corpus is procedurally barred to situations, as in the present case, where the §1983 plaintiff met with an unsuccessful outcome in a prison disciplinary hearing but has served his full punishment for the infraction." *Riley*, 1999 WL 801560 at *5.

The court's analysis in *Riley* is flawed because the court fails to understand that Riley *was* procedurally barred from filing a federal habeas corpus petition. Riley was found guilty of one charge of misconduct and spent fifteen days in disciplinary segregation. *Id.* at *1. After serving his sentence, Riley filed his §1983 suit alleging that the misconduct charge filed against him was retaliatory and violated the Eighth Amendment. *Id.* At that point, Riley had served his entire sentence. If habeas applied to segregation following misconduct tickets (which it does not), the fact that his sentence was done would have rendered a habeas corpus petition moot because he was no longer in custody. *Spencer*, 523 U.S. at 12-19. Most importantly, a habeas corpus petition did not lie in any event because Riley was not challenging the fact or duration of his confinement and also because good time credits were not at issue since he was serving a life sentence and was ineligible under Michigan law to earn good time. *Preiser*, 411 U.S. at 494; *Edwards*, 520 U.S. at 648. *Riley*, 1999 WL 801560 at *5.

The Sixth Circuit's rationale in *Huey*, and *Riley*, and in this case is also problematic because it has not been consistently applied. In a recent Sixth Circuit decision, *Herron v. Harrison*, 203 F.3d 410 (6th Cir. 2000) the Sixth Circuit allowed Herron to pursue his §1983 First Amendment retaliation claims, even though he was placed in disciplinary segregation and did not favorably terminate his grievances, with no mention whatsoever of *Heck* or *Edwards*.

In *Herron*, the inmate filed two lawsuits against prison officials alleging that his First Amendment right to freedom of religion was being violated. *Herron*, 203 F.3d at 412-413. Additionally, he filed several grievances on his own behalf and on behalf of a group of Muslim inmates. *Id.* at 413. After appearing before the prison grievance board on behalf of a Muslim inmate, Herron got into an altercation with a prison official and was charged with and convicted of creating a disturbance. *Id.* Herron received a sentence of five days in punitive segregation, thirty days' loss of visitation privileges, two months' loss of package privileges, and a three dollar fine. *Id.* Herron then filed suit under §1983, alleging retaliation for asserting his First Amendment right to file grievances and to provide legal assistance to another inmate, as well as due process violations in the conduct of his disciplinary hearing and sentencing. *Id.*

Despite the fact that Herron had not filed a habeas corpus petition and his disciplinary sanction had not been favorably terminated, the Court, with no mention of *Heck* or *Edwards*, held that, except for Herron's failure to plead that his fellow inmate needed legal assistance, Herron had made

out a First Amendment claim that prison officials had retaliated against him for providing legal assistance to another inmate. *Id.* at 416-417. The Court remanded the case to the federal district court to provide Herron with the opportunity to amend his complaint. *Id.* at 417.

The Sixth Circuit's inconsistent application and misapplication of *Huey*'s "unwind the judgment of the state agency" rationale clearly demonstrates that the Sixth Circuit has taken this Court's holding in *Edwards* too far. *Huey*, 230 F.3d at 230. As the Second Circuit Court of Appeals correctly pointed out in *Jenkins v. Haubert*, 179 F.3d 19, 27 (2d Cir. 1999), this Court "has never announced that the *Heck* rule bars a prisoner's challenge under §1983 to an administrative or disciplinary sanction that does not affect the overall length of his confinement." Any such "deprivation that does not affect the fact or duration of a prisoner's overall confinement is necessarily a condition of confinement." *Id.* at 28; *see also Torres v. Fauver*, 292 F.3d 141, 145 (3d Cir. 2002)(holding that "the favorable termination rule does not apply to claims that implicate only the conditions, and not the fact or duration, of a prisoner's incarceration"); *DeWalt v. Carter*, 224 F.3d 607, 618 (7th Cir. 2000)(holding "that the unavailability of federal habeas relief does not preclude a prisoner from bringing a §1983 action to challenge a condition of his confinement that results from a prison disciplinary action.") This Court must resolve the Sixth Circuit's reservations about its mechanical application of *Edwards* to prisoner cases challenging conditions rather than the fact or duration of confinement. Such prisoners do not need to meet a favorable termination requirement and should not be required to do so.

In sum, Congress has answered the first question for cert by excluding habeas and its favorable termination requirement from §1983 suits that challenge prison conditions. No ruling by this court suggests another result. The history of habeas demonstrates its limitation to challenges to the underlying conviction and sentence. The imposition of a favorable termination requirement by the Sixth Circuit was error and the judgment below should be reversed.

II. A PRISONER WHO HAS BEEN BUT IS NO LONGER IN ADMINISTRATIVE SEGREGATION MAY BRING A §1983 CHALLENGE TO HIS CONDITIONS OF CONFINEMENT (PRIOR PLACEMENT IN ADMINISTRATIVE SEGREGATION) WITHOUT FIRST SATISFYING THE FAVORABLE TERMINATION REQUIREMENT OF *HECK*

This case does not implicate the underlying criminal conviction, sentence or good time credits that may affect that sentence. As set out above, therefore, habeas rules, including those requiring a favorable termination, do not apply. The petitioner was no longer in segregation when this case was filed. He challenged as retaliatory his prior placement in segregation. Habeas rules do not apply and §1983 has no favorable termination requirement.

Imposing such a requirement would be tantamount to legislating an amendment to §1983 without action by Congress. Such a judge-made rule would close the federal courthouse to many §1983 plaintiffs and defeat the purpose of the civil rights act (affording a federal forum for the vindication of rights abused by state officials).

CONCLUSION

The judgment of the Sixth Circuit Court of Appeals should be reversed and the case remanded for further proceedings.

Respectfully submitted,

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